

MEMO ENDORSED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN WILEY & SONS, INC.,
CENGAGE LEARNING, INC., and
PEARSON EDUCATION, INC.,

Plaintiffs,

v.

BOOK DOG BOOKS, LLC and
PHILIP SMYRES,

Defendants.

Case No. 1:13-cv-00816 (WHP) (GWG)

Judge William H. Pauley III

Magistrate Judge Gabriel W. Gorenstein

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE REPLY
IN SUPPORT OF THEIR OBJECTIONS TO MAGISTRATE'S REPORT AND
RECOMMENDATION (ECF NO. 308) GRANTING IN PART DEFENDANTS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs John Wiley & Sons, Inc. ("Wiley"), Cengage Learning, Inc. ("Cengage"), and Pearson Education, Inc. ("Pearson") (collectively, "Plaintiffs") respectfully request leave to file a short reply to Defendants' Response (ECF No. 330) ("Defendants' Response") to Plaintiffs' Objections to Magistrate Judge Gorenstein's Report & Recommendation concluding that 117 of the 140 counterfeit titles at issue should be dismissed (as to sales but not as to importation).

Plaintiffs believe that the reply will facilitate this Court's review of the Report and Recommendation. In their response to Plaintiffs' objections, Defendants present a misleading discussion of a case from the U.S. Court of Appeals for the Second Circuit, *Mehra v. Bentz*, 529 F.2d 1137, 1139 (2d Cir. 1975). Defendants fail to indicate, however, that the decision applied New York state law applicable to negligence claims. *Mehra v. Bentz* and the other cases cited by Defendants are not applicable to adjudicating the federal copyright and trademark claims in suit,

and actually conflict with governing authority. Plaintiffs believe it is important to clarify this important point, which is at the center of their objections.

Additionally, Plaintiffs believe it would also be beneficial to the Court's review for them to respond briefly to some of the new points raised by Defendants, as well as distill what remains at issue to be decided.

Plaintiffs accordingly request leave to file the Reply attached hereto as Exhibit A.

Dated: November 5, 2015

Respectfully submitted,


OPPENHEIM + ZEBRAK, LLP

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Application granted.

SO ORDERED:

 11/6/15
WILLIAM H. PAULEY III U.S.D.J.